

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEAGER,)	
)	
Plaintiff,)	
)	Civil Action No. 07-429-GMS
v.)	
)	Jury Trial Requested
WARDEN RAPHAEL WILLIAMS,)	
DR. KENDALL, AND JIM WELCH,)	
)	
Defendants.)	

**STATE DEFENDANTS RAPHAEL WILLIAMS AND
JIM WELCH'S ANSWER TO PLAINTIFF'S COMPLAINT [RE: D.I. 2]**

COMES NOW, State Defendants Raphael Williams and Jim Welch (the "State Defendants"), by and through their undersigned counsel, and hereby respond to the allegations of Plaintiff Michael Leager's ("Leager" or "Plaintiff") Complaint dated July 1, 2007 and filed July 9, 2007 (D.I. 2), as follows:

Previous Lawsuits

State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the "Previous Lawsuits" section of the Complaint and, therefore, deny same.

Exhaustion of Administrative Remedies

State Defendants admit that there is a prisoner grievance procedure available at the Howard R. Young Correctional Institution ("HRYCI"). State Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations asserted in the "Exhaustion of Administrative Remedies" section of the Complaint and, therefore, deny same.

Defendants

1. State Defendants admit that at the time of the filing of Leager's Complaint, Raphael Williams was the Warden at HRYCI in Wilmington, Delaware.

2. State Defendants deny that "Dr. Kendal" is an employee of the HRYCI or the Delaware Department of Correction (the "DOC").

3. State Defendants admit that at the time of the filing of Leager's Complaint, Jim Welch was the Director of Health Services at the DOC in Dover, Delaware.

Statement of Claim

State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the "Statement of Claim" section of the Complaint and, therefore, deny same. By way of further response, State Defendants specifically deny that they violated Plaintiff's rights.

RELIEF

State Defendants specifically deny that Plaintiff is entitled to any relief or damages, including injunctive relief, compensatory damages, punitive damages, costs and/or attorneys' fees.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state claims upon which relief may be granted.

2. This action and all claims are barred by Eleventh Amendment immunity.

3. As to any claims against the State or against State Defendants in their official capacities, State Defendants and the State are protected from liability by the doctrine of sovereign immunity.

4. State Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 *U.S.C.* § 1983.

5. Officials and employees of the State of Delaware acting in good faith within the scope of their employment and without knowingly violating well established federal rights, are entitled to qualified immunity and cannot be held liable in this action.

6. As to any claims sounding in state law, the State Defendants are immune from liability under the State Tort Claims Act, 10 Del. C. §4001 *et seq.*

7. To the extent Plaintiff seeks to hold State Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 *U.S.C.* § 1983.

8. Plaintiff has failed to exhaust his administrative remedies, including but not limited to, remedies pursuant to 42 *U.S.C.* § 1997a(e).

9. State Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

10. To the extent Plaintiff's claims sound in negligence, Plaintiff cannot state a cause of action under 42 *U.S.C.* § 1983.

11. The Plaintiff's claims are barred by his contributory negligence.

12. Plaintiff fails to state a claim against State Defendants for failure to train and/or maintenance of wrongful customs, practices and policies.

13. Plaintiff fails to state a claim against State Defendants for violation of the Eighth Amendment.

14. Plaintiff's injuries and damages, if any, resulted from an intervening and

superseding cause.

15. Plaintiff's own conduct proximately caused and/or exacerbated his injuries, if any.

16. Insufficiency of service of process.

17. Insufficiency of process.

18. Lack of jurisdiction over the person and subject matter.

WHEREFORE, State Defendants respectfully request this Honorable Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the State Defendants; (ii) awarding State Defendants their fees and costs; and (iii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 577-8400

Attorney for the State Defendants

Dated: January 8, 2008

CERTIFICATE OF SERVICE

I, Erika Y. Tross, Esq., hereby certify that on January 8, 2008, I caused a true and correct copy of the attached *State Defendants Raphael Williams and Jim Welch's Answer to Plaintiff's Complaint [Re: D.I. 2]* to be served on the following individual in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT(S):

Inmate Michael Leager
SBI # 515275
Howard R. Young Correctional Institution
P.O. Box 9279
Wilmington, DE 19809

MANNER OF DELIVERY:

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross
Erika Y. Tross (#4506)
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